IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRI. APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1264 OF 2004

Shri Suryakant @ Bandu Ranoji Andekar,
R/at 38, Nana Peth,
Nr. Doketalim, Pune. ... Petitioner

V/s

1. The State of Maharashtra,
(Through the Secretary,
Home and Prisons Department,
Govt. of Maharashtra,
Mantralaya, Mumbai - 32.

2. The Superintendent,
Yerawada Central Prison, Pune.

3. The Inspector General of Police,
State of Maharashtra,
Central Bldg., Pune - 411 001.

4. The Secretary,
Deptt. of Law & Judiciary,
Govt. of Maharashtra,
Mantralaya, Mumbai - 32. ... Respondents

Ms. Sharmila Kaushik for the petitioner.

Mr. D.S. Mhaispurkar, A.P.P. for the Resp.Nos. 1 to 4.

CORAM: R.M.S. KHANDEPARKAR &
P.V. KAKADE, JJ.

DATED: 15TH FEBRUARY, 2005.

ORAL JUDGMENT (Per Khandeparkar, J.):

1. Heard.

2. The petitioner seeks declaration to the effect that his detention in Yerwada Central Prison by the respondents for the period from 19.5.2003 to 30.12.2003 was illegal and on that count seeks direction to the respondents to pay compensation of Rs.2 lacs. The basis for allegation regarding detention for the said period is that the petitioner, under letter dated 8.7.2002 by the Superintendent of the said jail, was informed about the date of release of the petitioner to be 19.5.2003 but he was actually released only on 30.12.2003. On the other hand, it is the case of the respondents that the intimation given to the petitioner by the Jail Superintendent under letter dated 8.7.2002 was not a correct information and once it was realised that the petitioner was not entitled to avail the benefit of the period spent by him on parole and furlough leave as well as the period during which he did not surrender after availing the leave, for the purpose of calculation of minimum period of life imprisonment, the date of release of the petitioner was corrected and he was released on 30th December, 2003 on completion of the required period in the imprisonment. Reliance is also placed in that regard in the letter dated 11.2.2003, copy of which is annexed as Exh.A to the affidavit in reply. Reliance is

also sought to be placed in the decision of the Apex Court in **Union of India & ors. v/s Sadha Singh, reported in (1999) 8 SCC 375.** The learned advocate appearing for the petitioner, however sought to distinguish the said decision of the Apex Court by submitting that the decision therein applies to the persons undergoing the imprisonment under Army Act and not otherwise. She has also submitted that, in the absence of necessary chart being made available in relation to the various remissions and parole leave and statutory benefits enjoyed by the petitioner, the petitioner will not be able to ascertain the exact date on which he ought to have been released on completion of the period of his imprisonment.

3. The petitioner has approached the Court with specific plea that there has been illegal detention of the petitioner for the period from 19.5.2003 to 30.12.2003 in Yerwada Central Prison. It is not in dispute that the petitioner was detained in the said prison pursuant to his conviction by the Sessions Judge under Sec. 302 of the I.P.C. under judgment dated 30.7.1987 in relation to C.R.No. 150 of 1985 which was lodged at Pharas Khana Police Station, Dist. Pune.

Undisputedly, he was arrested in connection with the said offence on 14.6.1985 and since then he was detained in the custody. It is also not in dispute that the petitioner was required to undergo actual minimum period of 14 years of imprisonment for compliance of the order in relation to the punishment for the life imprisonment on conviction under Sec. 302 of the I.P.C. At the same time, it is also not in dispute that the petitioner had availed parole and furlough leave from time to time in accordance with the law. It is also not in dispute that nearly for a period of 90 days he had over-stayed while availing such facility. In the back ground of these facts it is also undisputed fact that minimum period of actual imprisonment of 14 years was required to be completed in the jail and over all period including the remission and parole leave, the maximum period which was required to undergo was 24 years. In the back ground of those facts, it was primarily necessary for the petitioner to establish that the detention of the petitioner beyond 19.5.2003 and upto 30.12.2003 was not in accordance with the provisions of law pertaining to the calculation of the period of minimum 14 years excluding the furlough and parole leave as well as other benefits, if any, available. The petition nowhere

discloses any such effort on the part of the petitioner apart from vague allegation that the petitioner was illegaly detained beyond 19.5.2003. No doubt, the basis for allegation has been the letter dated 8.7.2002 issued by the Jail Superintendent. However, once the respondents have stated on oath that the said intimation was based on wrong calculation and that the correct calculation required detention of the petition till 30.12.2003 and more particularly taking into consideration the decision of the Apex Court in Sadha Singh, it was necessary for the petitioner to disclose on record as to how the calculations arrived at by the respondents are wrong or incorrect in relation to the minimum period the petitioner could have been detained in the jail.

4. As regards the decision of the Apex Court in **Sadha Singh's** case, the contention of the learned advocate for the petitioner that, it applies exclusively to the case where the person undergoes the imprisonment under the Army Act, is totally devoid of substance. Undisputedly, the Apex Court in the said case was dealingwith the matter wherein the concerned person was undergoing life imprisonment pursuant to the conviction under Sec. 302

of the I.P.C. read with Sec.69 of the Army Act, 1950. Nevertheless, the Apex Court therein has clearly held that -

> "Section 433-A would operate in the field and a prisoner who is undergoing sentence of imprisonment for life and is convicted for an offence for which death is one of the punishments provided by law or where a sentence of death imposed on a person has been commuted under Section 433(1) of Cr.P.C. to imprisonment for life, has to serve at least 14 years of imprisonment excluding remissions earned in jail."

And has further ruled that -

> "Section 433-A Cr.P.C. is a special provision applicable to all the convicts who are undergoing imprisonment for life as provided thereunder. For such convict, it puts an embargo for reduction of sentence below 14 years of actual imprisonment."

Being so, the Apex Court has clearly held that provision of Sec. 433-A of Cr.P.C. applies to all the convicts undergoing imprisonment for life and it does not make any differenciation between the cases where the imprisonment is pursuant to conviction under Sec. 302 alone and those under Sec.302 read with provision of the Army Act. The conviction under Sec. 302 without any applicability of the provisions of Army Act would also be covered by the provision of Sec. 433-A, once the punishment imposed is a life imprisonment. Being so, it is for a person who undergoes the imprisonment for life pursuant to the conviction under the provisions of I.P.C. or otherwise whereunder such imprisonment can be imposed, and such a convict will have to undergo at least 14 years of actual imprisonment excluding any remission granted. Considering the same, the contention on behalf of the petitioner that the respondents have wrongly construed the decision of the Apex Court is to be rejected.

5. It was also sought to be argued that the letter dated 11.2.2003 applies merely to the convicts under the provisions of N.D.P.S. Act. The contention is totally devoid of substance. The letter on the face of it, relates to the subject of the convict undergoing

imprisonment irrespective of the fact whether the conviction is under provision of I.P.C. or any other statute. Undisputedly, the last sentence of the letter clarifies that the requirement of minimum 14 years would also apply to the convict under N.D.P.S. Act. Same cannot be construed to mean that the letter applies only to the convicts under N.D.P.S. Act.

6. The last point sought to be raised is that no chart was made available to the petitioner about the actual remission granted to the petitioner. This contention of the petitioner is also devoid of substance. It is pertinent to note that inspite of the respondents having filed the affidavit disclosing the necessary details about the calculation of the period, for which the petitioner was required to be detained and justification for the petitioner's release only on 30.12.2003, the petitioner has not countered the said statement of facts nor has come out with any further affidavit denying any of the facts stated in the affidavit in reply filed by the respondents. Being so, the statements in the affidavit in reply are to be accepted as true and correct. There is absolutely no material on record to doubt the varacity and truthfulness of the statements made in the said affidavit. Being so,

merely because the specific chart is not made available by the respondents, apart from the fact that there is nothing on record that such demand was made by the petitioner after filing of the affidavit, that would not enure to the benefit to the petitioner to contend that the petitioner had been illegaly detained during the period from 19.5.2003 to 30.12.2003.

7. The petitioner having not been able to establish the allegation about the illegal detention of the petitioner in the jail, no case is made out for the grant of relief prayed for or for the direction to pay any compensation. The petition therefore fails and is dismissed. The rule is discharged with no order as to costs.

(R.M.S. KHANDEPARKAR, J.)

(P.V. KAKADE, J.)